No. 12142

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CANNON MANUFACTURING CORPORATION and JAMES H. CANNON, an individual, doing business as CANNON ELECTRIC DEVELOPMENT COMPANY,

Respondents.

BRIEF OF RESPONDENTS.

DAVID H. CANNON,
650 South Spring Street, Los Angeles 14,
Attorney for Respondents.

REED E. CALLISTER,
Of Counsel for Respondents.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171

TOPICAL INDEX.

TABLE OF AUTHORITIES CITED.

Cases.

Statutes

No. 12142

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CANNON MANUFACTURING CORPORATION and JAMES H. CANNON, an individual, doing business as CANNON ELECTRIC DEVELOPMENT COMPANY,

Respondents.

BRIEF OF RESPONDENTS.

This matter is now before this Honorable Court on the petition of the NATIONAL LABOR RELATIONS BOARD filed herein December 31, 1948, to enforce its order issued on December 16, 1946.

Jurisdiction.

As stated in petitioner's brief (p. 1) this court has jurisdiction pursuant to Sections 10(c) and (e) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*), hereinafter called the Act.

Statement of the Case.

The statement of the case as set out in pages 2 through the first two lines of page 3 of petitioner's brief is satisfactory to the respondents. The matter set out in that brief under "B. The Board's findings and conclusions as to respondents' unfair labor practices" (Pet. Br. pp. 4-44) and the conclusions set out therein are not conceded by the respondents.

The hearing before the Trial Examiner closed June 7, 1945; the Board's Order is dated December 16, 1946; the petition herein was filed December 31, 1948.

It is interesting to note, therefore, that the order which by this petition it is sought to enforce was made one year, six months and nine days after the close of the hearing before the Trial Examiner; the petition was filed in this court two years and fifteen days after the date of the order which it is now sought to enforce; and that it was three years, six months and 24 days between the close of the hearing before the Trial Examiner and the date of the filing of the Petition in this court.

To the end that this court may have before it the background of operations of the respondents, we call attention to the following facts:

The business began in 1915 under the name of Cannon Electric Development Company. In 1920 it was incorporated under that same name [R. 143-4]* and continued

---

*Explanatory Note: Herein the Printed Record is designated "R."; exhibits which have not been printed but have been filed with the clerk pursuant to stipulation [R. 132-133] are designated "Bd. Ex" or "Resp. Ex."; Petitioner's Brief as "Pet. Br."; Cannon Employees Association as "CEA"; Cannon Employees Recreation Association as "CERA"; United Electric, Radio and Machine Workers of America CIO as "UE"; International Association of Machinists Lodge 311 as "IAM".

to so operate until the name of the corporation was changed to Cannon Manufacturing Corporation. This was in 1939. About April, 1939, James H. Cannon qualified to do business in Los Angeles County under the fictitious firm name of Cannon Electric Development Company and he has continued to so operate up to the present time [R. 144-5]. The purpose in operating the two businesses was because Mr. Cannon "had in mind letting the employees participate in the operations" and as he said, "I took the designing and creative work and the engineering and the sales contact and advertising from the actual manufacturing which we could pin down to a real basis of fact, and that is where I had in mind letting the employees in on the manufacturing, which wouldn't have any ambiguous costs and then they could participate accordingly, but before I could carry out my plans the war hit us" [R. 146-7]. All of the sales of the company's products were made by Cannon Electric Development Company and it later sold all of the products of the Cannon Manufacturing Corporation [R. 149].

The business had a 4,000% increase in employees in four years and Mr. Cannon was, as he said, not able to handle any labor relations because with such an increase of employees there was no opportunity "to do much contacting anywhere except to hold the organization together and keep out of the hands of the investment bankers and the sharks" [R. 151].

The Board's Order.

The Board's order is based upon findings—

(1) That respondent dominated and interfered with the Contact Committee and the CEA and contributed support to these organizations in violation of Section 8(2) of the Act [R. 94-95].

(2) That respondents discriminatorily discharged eleven of their employees in violation of Section 8(3) of the Act, thereby discouraging members in the UE and encouraging membership in the CEA [R. 95].

(3) That respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(1) [R. 95].

(4) And that these acts (called "unfair labor practices") affected commerce within the meaning of Section 2(6) and (7) of the Act [R. 95].

It is urged by the petitioner (Pet. Br. 3) that the Board ordered the respondents to cease and desist from the said unfair labor practices found, and—

(T) To cease giving effect to its contract with the CEA,

(U) To withdraw recognition from,

(V) And completely disestablish the CEA,

(W) To reimburse all employees whose dues in the CEA respondent had checked off for the amounts thus deducted since February 15, 1945, and

(X) To refrain from recognizing the Contact Committee as the collective bargaining agency of their employees in the event that organization should return to active existence [R. 11-13].

The Board's order further required the respondents to

(Y) Offer reinstatement with back pay to the 11 employees discriminated against and to post appropriate notices [R. 13-16].

Errors Relied Upon by Respondent.

I. The points sought to be made by petitioner's brief:

"B. The Board's findings and conclusions as to respondents' unfair labor practices.

"1. Early labor relations history; accompanying interference, restraint, and coercion" (Pet. Br. 4).

are not sound.

II. The Board's findings and conclusions as to respondents' unfair labor practices.

"2. Respondents' domination and support of employee organizations; accompanying interference, restraint, and coercion" (Pet. Br. 7).

as urged by petitioner should not be upheld.

III. The Conclusions discussed by petitioner under:

"3. Respondents' discharges in violation of Section 8(3) of the Act." (Pet. Br. 32.)

are unsound.

IV. The Board conducted elections—each won by CEA—and which resulted in certifying CEA as bargaining representative and in the making of the contract between respondents and CEA should preclude the enforcement of the Board's order.

V. The enforcement order sought here should not be made because of delay in bringing these proceedings.

ARGUMENT.

It is reasonable to expect that petitioner has set out in its brief the strongest possible case against the respondents. Unusual as it is, we earnestly believe that petitioner's brief itself offers the best possible argument for denying the petition herein. For that reason we have in large measure followed petitioner's brief in the discussions hereafter.

I.

The Points Sought to Be Made by Petitioner's Brief:

"B. The Board's Findings and Conclusions as to Respondents' Unfair Labor Practices.

1. Early Labor Relations History; Accompanying Interference, Restraint, and Coercion." (Pet. Br. 4) Are Not Sound.

Many of the statements made under this heading of the petitioner's brief, in our opinion, refute the charges which as a whole are leveled against the respondents. It is conceded (Pet. Br. 4) that as early as 1937 the corporation voluntarily entered into an agreement with the IAM. This was apparently done without coercion or "pressure" of anyone as against the corporation.

Petitioner complains that [R. 4] "in the spring of the following year" when IAM sought to bargain on behalf of the employees, Mr. Cannon disclosed "his antipathy to the organization of his employees by an 'outside labor union.'" We earnestly believe that careful perusal of that correspondence [R. 636-647] and of the tentative

agreement will demonstrate complete good faith of Mr. Cannon and of his companies in actually seeking "to promote new activities to keep them (his employees) employed" (as had been the corporation's practice) rather than to simply lay off more people when the work became slack [R. 638].

Surely it is going a long way to urge that an employer was coercive of his employees and improperly interfered or restrained the activities of those employees when as early as 1937 and up to and beyond April 27, 1948 [R. 636] he made the voluntary agreement with the IAM and was seeking methods and means by which he could keep his employees profitably employed.

It must be borne in mind that in submitting the so-called "tentative agreement" the IAM injected themselves into this employer-employee relationship and proposed an agreement which, for the reasons pointed out by Mr. Cannon was not at all fair, without any evidence from the IAM that it had authority to act as a bargaining agent for the whole or any appreciable number of the employees of Mr. Cannon.

If, as pointed out "the organization of the International Brotherhood of Electrical Workers among the employees of the Corporation ceased to exist at some time shortly before the IAM sought to represent the employees for the purpose of collective bargaining" (Pet. Br. 5), certainly such fact cannot be charged as an offense against the respondents; it must have been the voluntary act of the union itself.

It seems a far cry from the present claim of the Board that the respondents had been guilty of some reprehensible conduct when to support that contention the petitioner [Pet. Br. 6; R. 646] points out that Mr. Cannon declared that he "would welcome the organization of employees into a group, represented by an accredited committee authorized to meet with the management to discuss problems of mutual interest or grievances" [R. 645].

There is a further incongruity between the petitioner's broad stand that these respondents have been guilty of unfair labor practices and the statement made on page 7 of petitioner's brief as follows:

> "Although thereafter in June 1938, the IAM obtained an agreement from respondents [Resp. Ex. 37, R. 156-157], the grievance committee called for by the agreement did not function either in 1939 or 1940, and insofar as the record shows, there was no IAM organizational activity among the respondents' employees after 1938 [R. 158-159]." (Pet. Br. 7.)

Are the respondents chargeable with this nonactivity of the grievance committee provided for under the IAM Agreement?

II.

The Board's Findings and Conclusions as to Respondents' Unfair Labor Practices:

"2. Respondents' Domination and Support of Employee Organizations; Accompanying Interference, Restraint, and Coercion." (Pet. Br. 7.) As Urged by Petitioner Should Not Be Upheld.

THE CONTACT COMMITTEE.

The Contact Committee came into existence "following a vast increase in personnel in the early months of 1941" (Pet. Br. 7).

It is clear from Mr. Cannon's testimony and conceded by the petitioner's brief (p. 7) that this vast increase in personnel "coincided with the commencement of organizational activity of UE."

Engaged as Mr. Cannon was in the problem of taking care of a 4,000% increase in employees to the end that the company under such strenuous circumstances could produce upwards of 85% of all of the electrical connectors and contacts used in the war effort [R. 140] and during a large part of which time he was being harassed by would-be organizers of labor unions and other persons [R. 152, 155, 159] it is not surprising that he might have written letters or bulletins in terms perhaps more vigorous and colorful than more deliberate thought and less strenuous activity would have dictated. However, under the circumstances above mentioned it is respectfully submitted that Mr. Cannon showed a desire to give his employees every possible protection for their own good without regard to his own personal interests or those of his companies. Reference is made in petitioner's brief (pp. 7-9) wherein, President Cannon on May 20, 1941,

was "advocating the establishment of the Contact Committee for the purpose of considering complaints and suggestions of the employees . . . it (letter from Mr. Cannon of May 20, 1941) suggested that the employees hold an election on May 26, 1941, to select a 'contact man' from each foreman's group [R. 648]. *Foremen and executives were declared ineligible as 'Contact men'* [R. 648]. The letter provided that the Contact Committee elected by the employees select from among its membership *an executive committee of three to examine the complaints* and suggestions submitted by the individual committee men and to 'pass on to management such items as they consider worthy of consideration' [R. 649]." (Pet. Br. 8; emphasis supplied.)

The very nature of the letter as quoted in the petitioner's brief belies any attempt on the part of respondents to engage in any unfair labor practice. Written as it was in 1941 it could hardly be urged that it was a self-serving declaration. If the corporation (Pet. Br. 8) was willing to "furnish paid clerical help to help out" etc. (Pet. Br. 8), only if it proved desirable so to do ought not to be used against the respondents.

We respectfully call attention to note 11 on page 8 of petitioner's brief where among the other functions of the Contact Committee it was provided that such committee would "represent all workers and present their viewpoints for the *guidance of management.*" [Bd. Ex. 34.] (Emphasis supplied.)

We are aware of the fact that the mere suggestion will seem to our opponents as an intentional affront; none is intended, but it is difficult to imagine what more the respondents could have done other than what they did do to see that the election of the Contact Committee, its or-

ganization and actions were fair, honest and worthy of good employer-employee relations; statements in petitioner's brief (pp. 9-11) bear out this fact.

If "the IAM . . . was not then functioning as an organization of the corporations' employees" (Pet. Br. 10) that certainly was no fault of the respondents as above pointed out.

The suggestion (Pet. Br. 10) that Mr. Cannon's declared "opposition to closed shop contracts with the IAM and UE stands in marked contrast with his subsequent execution of a closed shop contract with the . . . CEA" is in our opinion a specious and unfair argument. In one breath petitioner argues that Mr. Cannon's declared opposition to a "closed shop" shows an antipathy toward labor organizations and in another breath petitioner argues that because Mr. Cannon was finally *required* as a result of an election (hereafter discussed) to comply with the specific provisions of Section 8(3) in making a "closed shop" contract with CEA, he was guilty of unfair labor practices. Section 8(3) is set out in part in the appendix to the petitioner's brief. It specifically sanctions an agreement which requires "as a condition of employment, membership" in a labor organization which is representative of the employees as provided for in the Act.

The argument smacks of damnation to one whether he does or does not provide for a closed shop in an agreement with the bargaining agent.

Can it be, with reason, contended that Mr. Cannon's flat declaration in the "penny post card" that the expression of the employee "would not interfere with his mem-

bership in any union" (Pet. Br. 11) meant absolutely nothing, except as the petitioner now contends that it was an unfair labor practice? Certainly not!

Petitioner next urges (Pet. Br. 12) that the Committee "had no constitution or by-laws and respondents' letter of May 20, 1941 . . . made no provision for dues, membership, or meetings of employees." Certainly nothing in the Act itself, nor indeed nothing in reason would hold that any committee acting as the bargaining agent for employees must *necessarily* have a constitution or provide for dues. Such committee would be just as valid if as a bargaining agent it was made up of men who gave without any expense whatever to the employees, the services of that committee. Will it be said that employees must be penalized by paying dues to some bargaining agent before such bargaining agent could be recognized as being lawful. Complaint is also made on page 12 that respondents' letter of May 20, 1941, made no provision for "meetings of employees." This is strange argument in face of many contentions made throughout the petitioner's brief that the very fact that the respondents did make available space where meetings could be held was regarded by petitioner as an unfair labor practice. Here again is a glaring example of the inconsistencies of petitioner's position. To recap: Petitioner contends that respondents' letter of May 20, 1941, which petitioner says advocated the establishment of a committee, made no provision for meetings and that that fact is an indication that respondents are guilty of the offenses charged; at other places in its brief (Pet. Br. 21, 22, 29) the action of the respondents in making available time and places for the holding of meetings is *condemned* by the petitioner.

Petitioner says that the Contact Committee was active until sometime in September, 1941, when "at the time pursuant to the suggestion of *employee* Ned Mandella, . . . the Committee met in the plant conference room and voted to disband" (Pet. Br. 12-13), and then petitioner has the temerity to suggest that "the record contains no evidence that respondents took any steps to advise the employees of that fact (that the Contact Committee was illegal) or to disestablish the Committee [R. 603-605]." If the petitioner admits that Mandella was only an *employee* and that it was through Mandella's own operations, and in no way connected with the respondents, that the CEA was disbanded, how is that chargeable as an offense against respondents? If the respondents had actually taken any steps to advise their employees that the Contact Committee was illegal under the Act or had actually taken any steps to disestablish the Contact Committee, then most certainly the petitioner would have been most vehement in declaring that such action on the part of the respondents was interference with the rights of the employees and that it was an unfair labor practice. The very fact that the respondents took *no* steps to disestablish the Contact Committee after the Committee had *itself* voted to disband is important evidence in showing that the respondents always maintained "hands off" policy and that the Contact Committee was in no way company dominated or controlled.

Nor should petitioner's contentions in its brief under

"b. The Cannon Employees Association

(1) Formation" (Pet. Br. 13)

be sustained.

Much of the argument under this section of the petitioner's brief begins and proceeds upon the premise that

Ned Mandella's operations were attributable to and binding upon the respondents even though such actions by Mandella may have been actually *in direct violation of law,* and even though Mandella knew they were in such direct violation of law. The premise is false and not in any sense justified by the evidence before the trial examiner. Mandella was nothing more than an "employee" of the respondents (Pet. Br. 12); "a tool crib attendant" (Pet. Br. 13).

Because it seems particularly pertinent at this point may we say again that the petitioner's brief itself is a very strong refutation of the charges made against the respondents. That brief is replete with instances where *any* utterance made or *any* act committed by *any* person whomsoever and whether or not that person was or ever had been connected with the respondents is taken against the respondents whereas the evidence given by responsible officers or employees of the respondents and which is favorable to the respondents is rejected as unreliable, if not altogether false. Even the mere *cursory* reading of petitioner's brief shows that there was almost a complete brushing aside of every declaration and act favorable to the respondents and that full credence was given to all of the evidence—oftentimes hearsay two or three times removed—that tended to discredit the respondents. *Careful* reading of petitioner's brief establishes the truth of the foregoing assertions beyond peradventure of doubt.

When George refused to join CERA and told Mandella that Mandella might "get himself in trouble" [R. 210] with his activities on behalf of CERA, Mandella was surely put on notice and at least George felt that Mandella's activities were improper. Even though petitioner says that Mr. Cromwell "approved and gave direct aid to

Mandella's organizational efforts 'to keep out the CIO'" that conclusion is not borne out by the instances cited. An examination of the record [R. 212-213] does not justify the implications which our opponents would like to have drawn that "the organization 'they were forming'" meant any organization that the respondents "were forming."

If the CEA and CERA were formed or kept under the domination or control or influence of respondents what would have been the necessity of so carefully protecting the ballots cast and the methods and places of voting of which the petitioner complains? (Pet. Br. 15-16.) If the CEA and CERA were so dominated and controlled there would be no point in respondents' guarding those ballots, etc. This same care was given in protecting from tampering the ballots cast in the "Board-conducted election" held on January 29, 1943 (Pet. Br. 27, 29).

That "CEA retained as its attorney Lewis, who had served CERA as its attorney" (Pet. Br. 17), indicates, clearly, Mr. Lewis was no tool or agent for the respondents; in fact, James H. Cannon strongly opposed keeping Lewis on as the attorney for CEA because his fees were coming out of the employees of the company [R. 539]. Nevertheless, Mr. Lewis was kept on as the attorney of CEA (Resp. Br. 17). Are those facts at all consistent with the present contention of the Board that CEA and CERA were mere tools of or dominated by the respondents? To ask the question is to answer it.

With respect to petitioner's declaration:

> "(2) Respondents' interference with, support to, and domination of CEA prior to the Board-Conducted election of January 1943" (Pet. Br. 17).

we suggest: No one could or wants to question the fact that "following the organizational steps" under which was formed CEA, "CEA and UE engaged in rival campaigns for the allegiance of the employees which culminated on September 9, 1941, in a Board-election to determine the bargaining representative [R. 37, 39-40, 595, 709-710." Pet. Br. 17-18]. We have considerable to say hereafter about these Board-elections but it might be well to here remind this court that each of the two Board-elections was brought about through the making of charges against the respondents by and between the rival unions very much the same as (and in some instances absolutely identical with) the charges made against the respondents in petitioner's brief.

Here again the petitioners seek to punish the respondents for the sins of Mandella, the "employee" and "tool crib attendant," and of the "employee" Monjar who the petitioner contends, "actively solicited her co-workers to join CEA" but who later became an ardent supporter of the UE and upon whose testimony to a very large extent the Board relies for its findings.

It is true that the *employee* Monjar flagrantly violated the Act and engaged in organizational activity on behalf of CEA; later turned around and on behalf of UE engaged in organizational activities, all in direct violation of law. She now complains of her activities carried on in behalf of CEA. She then testified on behalf of the Board. All of these facts force the conclusion that her testimony was unreliable and should be disregarded. She was no witness of mean ability. We respectfully invite the court to read her testimony [R. 343-380]. She was the most willing, versatile, vitriolic and opinionated witness in the whole case. A vast amount of the evidence which she gave was

such that it could not, *by its very nature,* be contradicted. Her conversations with others, and many of the things she heard were hearsay—unknown to the respondents—and there was no possibility of refutation.

Apparently the respondents learned of some improper organizational activities of certain of their employees and thereupon promptly and about August 15, 1941, as pointed out in petitioner's brief, page 18, "issued a booklet for its employees entitled 'Employee Information and Regulation,' which provided, *inter alia,* that employees were not to solicit membership in any organization 'during working hours or on company property.'" Does not this last quoted statement from the petitioner's brief exemplify a practice too frequently indulged in of a "pot calling a kettle black," viz., CEA and UE having each "continued organizational activity on company time and property" (Pet. Br. 18) in violation of the Act itself, and then seek to enforce the Board's order against the respondents for the very benefit of these law breakers and regulation violators!

There is not the slightest thing in this record which could possibly rise to the dignity of evidence that shows that the respondents dealt with the organizational activities of the two unions in different ways. The occurrances set out in page 19 of petitioner's brief are not shown to have been brought to the attention of the respondents and many of them are so trivial as to merit no attention.

It is not fair to attribute to Foreman McClung's statement (Pet. Br. 20), "Well, we won the election" the meaning that petitioner seeks to imply that it meant, that "we"—the respondents and McClung won the election. It is more reasonable to believe that by "we" Mr. McClung

meant those with whom he was associated, that is, the CEA.

After the election was over—and in which election CEA defeated UE by a vote of 370 to 268 [R. 709-710]—it is not surprising—but it certainly ought not to be damning—that some individual in his exuberance or in a playful mood should tell an employee that he had "better join the CEA" or that another employee should be asked to cease wearing a CIO pin (Pet. Br. 20).

Another glaring inconsistency in petitioner's position is the comment in the paragraph beginning at the bottom of page 20 of petitioner's brief concerning President Cannon's "earlier pronouncement to his employees that the plant would never be operated as a 'closed shop,' " whereas the CEA agreement made October 24, 1941, "required respondents to employ 'only members of the (CEA) in good standing.' " To cap it all off in inconsistencies the brief points out that "respondents opposed the inclusion of a union security clause in their contract with CEA." (Pet. Br. 21.) Where on earth can such recitals be used by the petitioner as an argument in an effort to sustain these findings!

The statement (Pet. Br. 24) that "with the renewal of organizational activity by UE during 1942, President Cannon distributed among the employees several letters which attacked that organization and gave further support to CEA (these letters are set forth in the Record at pages 671-689)" is simply contrary to the fact. The letters so demonstrate.

We earnestly feel that the severity of the criticism made by petitioner against Mr. Cannon's letter [R. 689; Pet. Br. 25] is not fair and the conclusions which the Board seeks to draw from that letter are groundless. The

twisting around (Pet. Br. 26) of the language in the letter of November 11, 1942 [R. 685 at 688] is manifestly improper. Nowhere in that letter by innuendo, inference or otherwise could it be said that Mr. Cannon intended that by using the language "we can accomplish even better results than those already obtained" [R. 688] he meant that the respondents *in conjunction with or through domination of CEA* could accomplish these better results. Note his language:

> "You have an organization in the form of a union that is supposed to be fully Democratic and to represent you.
>
> "A Company dominated Union would defeat its own purpose as has been demonstrated in many national instances, but an employees' union that is not representative and not democratic serves the interest of no one except the ones in the saddle.
>
> "I understand you have now passed judgment on a new set of by-laws that are liberal enough to enable you to govern your own affairs by representative majority backing, in which case we can accomplish even better results than those already obtained" [Bd. Ex. 23; R. 687-688].

The next subheading under the petitioner's brief is found at page 26 where it is declared:

> "(3) Respondents' interference with, support to, and domination of, CEA after the Board-conducted election of January 1943" (Pet. Br. 26).

As previously stated we will discuss later in this brief the different elections conducted under the direc-

tion and supervision of the Board but we cannot refrain at this point from quoting the petitioner:

> "The election was held on January 24, 1943, and CEA again polled a majority [R. 47; Bd. Ex. 68K]. Subsequently, the Board in a Supplemental Decision and Certification, issued on April 12, 1943, certified CEA as bargaining representative of respondents' employees and overruled objections filed by UE alleging that respondents had illegally assisted CEA prior to the election [R. 47-48; Bd. Ex. 68P]." (Pet. Br. 26.)

There certainly could be no objection by the Board or by the complaining unions that the CEA written contract provided that the respondents "would discharge employees who had been expelled from CEA membership for failure to pay dues [Bd. Ex. 9, pp. 7-8]" or that "the contract also provided for the dismissal of employees expelled from CEA for reasons other than the non-payment of dues," particularly since "in such cases an arbitration procedure was made available if respondents disputed the propriety of the reasons upon which CEA based the expulsion [Bd. Ex. 29, p. 28]" (Pet. Br. 27). It seems to us the Board itself and the complaining unions should not object that the CEA contract with respondents provided that dues could only be deducted from the wages of employees *who authorized the check-off procedure* (Pet. Br. 27).

In short, the specific provisions of the CEA contract with the respondents were authorized under the Act and the provisions therein adverted to in the petitioner's brief belied the very suggestion that the respondents dominated and controlled CEA.

As one of the evidences of respondents' interference with and domination of CEA, petitioner points out on page 27 of its brief that in the spring of 1943 the presi-

dent of CEA was told by President Cannon that Cannon "didn't approve of Mr. Lewis' being the association attorney because . . . the employees were paying him out of their wages" [R. 539; Pet. Br. 27] but this was only after a campaign had already begun among the officials of CEA to rid themselves of Mr. Lewis' services [R. 539]. However laudible may have been Mr. Cannon's suggestion in the interest of the employees, the writer of the petitioner's brief seeks to make a great deal of this expression of views. It is important however to bear in mind that there is not the slightest suggestion in the evidence that Mr. Lewis was objectionable to Mr. Cannon because Mr. Cannon had any desire to dominate or control CEA or to prevent it from having the best legal advice possible; the financial interests of the employees was the sole moving factor in this altogether casual remark of President Cannon.

The Board says that a year and three months later, "in about May, 1944, Robert Cannon, then vice-president of the corporation [R. 599], *similarly intruded* in the affairs of CEA" (Pet. Br. 28; emphasis supplied). Then in petitioner's brief certain recitals are made concerning Rachel McBurnie, Mr. Gibson, Mr. Robert Cannon and Mr. Richard Franklin which are so trivial as to be undeserving of much comment. The trivialities appear in the brief itself on page 28 but the original record [pp. 452 *et seq.*] clearly shows that the conclusions that the petitioner would like to have drawn from the episode are in no way justified. Because Mr. Cannon said "that 'Mr. Franklin had made a good business agent' [R. 454]" (Pet. Br. 28) could not be "interference" if it were multiplied by 100. Suppose Mr. Cannon instead of saying Mr. Franklin had been a good business agent had said that he had been a *bad* business agent and had also said that

CEA and the respondents had *not* gotten along very nicely. Would that have been "interference" or an unfair labor practice? What is an official of the company supposed to do when someone seeks and is given an interview? Should he stand dumb and say nothing or talk about the weather? By no stretch of the imagination it seems to us, can the remarks of vice-president Cannon be construed as improper.

The writer of petitioner's brief sees some evil in the fact that "one of respondents' guards, was dressed *in a business suit*" watching the box where the ballots were deposited when the election was held by CEA members to determine whether or not they wished to retain Franklin and Gibson or other CEA directors who had voted for the ouster of Franklin (Pet. Br. 29). Does the dressing of this guard in a business suit make any difference? Would it have been more or less of a grievance if that employee of the respondents had been dressed in a company uniform? There could not possibly have been any intimidation or wrongful act in allowing this guard or Cal Cannon, in the employ of the respondents, to watch the ballot box or care for the box and the ballots after the voting had been done.

In recent years particularly, some strange things have been done for the ostensible purpose of assisting labor and improving working conditions and increasing wages for the workmen. In the abstract and if the declared purposes were in fact carried out it would be most salutary and desirable but there ought to be some consistency in the application of standards of conduct which apply both to the employer as well as to the employee. In labor cases as in other cases the credibility and reliability of witnesses should be tested by the interest or lack of interest of the witnesses testifying, their apparent frankness or

lack of it, etc. It seems to us that these general principles should be conceded by the petitioner. However, petitioner's brief shows not only indifference but direct opposition to these principles in seeking to sustain the Board's order (Pet. Br. 30-32). If the shop stewards in Mrs. McBurnie's department did hold a meeting in the plant cafeteria on company time at which they elected Mrs. McBurnie as chief steward for her shift, and if Mrs. McBurnie was absent from her work for an hour to attend this CEA meeting and if no deduction was made from her pay for the time so spent away from her work on CEA business and if Employee Caffarel, one time president of CEA, frequently absented himself from his work throughout his incumbency as an officer of CEA without any loss of pay and if John Gibson, as president of CEA used company time in connection with the affairs of CEA, it seems most unusual that these very persons for whose direct benefit these proceedings were brought and who, themselves, knowingly violated the Act —if those things were violations of the Act—should now be called upon as the chief witnesses to substantiate the charges of unfair labor practices! There can be no doubt that the testimony of Mrs. McBurnie, Mr. Caffarel, Mr. Gibson and these other former CEA officials who were called upon to testify against the respondents should be so tested. The entire testimony of each of these witnesses so reeks of prejudice against the respondents and CEA that it should be utterly disbelieved or disregarded; certainly it should be most carefully scrutinized.

That CEA ceased to be active as a labor organization of respondents' employees in March, 1945, and advised the respondents that its members had voted on March 13 to become members of Mechanics Educational Society of America, Local 75, and that henceforth the society was

the exclusive bargaining agent for respondents' employees, etc. (Pet. Br. 31), is not specifically urged by the petitioner as being any part of any unfair labor practice, nor could it be so charged.

III.

The Conclusions Discussed by Petitioner Under:

"3. Respondent's Discharges in Violation of Section 8(3) of the Act." (Pet. Br. 32.) Are Unsound.

Under this particular subdivision in petitioner's brief, petitioner first discusses:

"1. The Discharges of June 12, 1943" (Pet. Br. 32) and contends that the discharge of Erma A. Evenstad, Vivian Sullivan, Monna M. Nye, Joan Lawrence, and Clarence Youngberg were unjustified and tend to sustain the order of the Board.

Petitioner does not contend that the discharge of these last five named employees was not imposed upon the respondents by the collective bargaining contract of May 5, 1943; in other words, it is virtually conceded that under the terms of that collective bargaining contract and the demands made upon the respondents by CEA, the respondents had no alternative but to discharge them. The collective bargaining agreement required membership in the CEA as a condition of employment and provided that the respondents would dismiss employees expelled from the CEA because of dues delinquency [Bd. Ex. 29, p. 8]. That agreement further provided that in cases of employees expelled from CEA for reasons other than dues delinquency, the respondents might take such request for discharge to arbitration, if the respondents did not agree with the reasons furnished by CEA for the discharge of

the employees [Bd. Ex. 29, pp. 7-8]. It is conceded (Pet. Br. 33) that the five employees here under discussion had distributed a letter among the other employees of the respondents asserting that these five employees did not intend to join CEA. Later CEA served each of the signers of that letter (including the five employees here under discussion) with a complaint accusing them of violating the by-laws of CEA and stating that a hearing on the charges would be held on June 8, 1943 (Pet. Br. 33).

On June 8, 1943, the date set for the hearing, the five employees in question sent out a second letter stating that they would not attend the CEA hearing [R. 410, 411, 419-420, 436, 631, 695; Pet. Br. 33].

On June 9, 1943, the CEA advised the respondents that the employees now under discussion had been expelled from CEA because of infractions of the by-laws and because of dues delinquencies and thereafter CEA demanded that these employees be discharged by the respondents within seven days all in accordance with its agreement of May 5, 1943 [Resp. Ex. 2; R. 707]. The employees, Erma A. Evenstad, Vivian Sullivan, Monna M. Nye, Joan Lawrence, and Clarence Youngberg were discharged "as per agreement" with CEA and which agreement *required* the respondents to do this very thing.

If the contract between the respondents and CEA [dated May 5, 1943; Bd. Ex. 29] was a valid substisting contract, the discharge of Evenstad, Sullivan, Nye, Lawrence and Youngberg was not only justified, but required; the respondents had no alternative. Even if it be true that certain of these last named dischargees had been active in UE, notably in the signing and publication of certain bulletins, there is no evidence whatever that such

activities in UE had anything whatever to do with those discharges by the respondents.

The next thing petitioner singles out for discussion is—

"(2) The discharge of Armant" (Pet. Br. 34).

That Armant had been an active UE member, had declined to join the CEA but after the election of September 9, 1941 (which was won by CEA) he did join CEA and later became a candidate for election to the Board of Directors of CEA (Pet. Br. 34-35), those facts or none of the other facts referred to in the petitioner's argument resulted in Armant's discharge. The reading of the petitioner's arguments clearly demonstrate, in our view, the desire of the respondents to do everything the respondents could possibly do to protect his interests, and the rights of the UE, of which he was a member and of all others properly concerned, the imputations contained in petitioner's brief to the contrary notwithstanding.

Surely no one in his right mind would think that the respondents would knowingly permit—much less encourage—any requirement by anybody that a prospective employee would have to "pay fees to private employment agencies in order to secure jobs with the company [R. 296-298]" (Pet. Br. 35). In spite of the charges made against Armant by CEA and although his card had been pulled from the rack, Mr. Armant did not see fit to contact the respondents but "he telephoned Mandella at the CEA office who told him that he was discharged [R. 311]. Armant then communicated with the CIO which called in the services of a Federal Conciliator [R. 310, 312]. Thereafter on August 27, 1942, Armant broadcast over the radio under the sponsorship of UE an account of his discharge [Bd. Ex. 48; R. 335, 340-341]. About 2 weeks

after his discharge, Armant was reinstated and received back pay for the time lost [R. 313]" (Pet. Br. 36).

Nothing whatever appears in the record to indicate that *his reinstatement about two weeks after his discharge and receipt of back pay* for the time lost was the result of any pressure put upon the respondents; it was the voluntary act of the respondents.

What better evidence of coercion *of the respondents by CEA* could possibly be shown than the facts related at pages 36 and 37 of petitioner's brief? What more in the interest of fairness could possibly have been done by respondents and was done in trying to ferret out the difficulties between Armant and CEA? The shut down of this plant even for so short a time as did occur in this instance was most hazardous to the country's defense. Mandella "stated that the employees were 'out on strike and would not go back to work as long as Mr. Armant was in the plant'" (Pet. Br. 36). The matter did go to arbitration and after that hearing Federal Conciliator Livingston reported the results to Armant. There is some complaint in the brief that Armant was "never advised . . . directly about this [R. 324]" (Pet. Br. 37), but it is clear that when Mr. Armant came to Mr. Wilcox, the personnel manager of the respondents, he was told by Mr. Wilcox that he could not put him back to work [R. 326].

Then Mr. Armant filed his suit in the state court with the result as shown in the Findings of Fact and Conclusions of Law and the Judgment in the Superior Court of Los Angeles County, California [Bd. Exs. 73 and 74].

A short résumé of the "Armant incidents" might be helpful. On December 3, 1941 [Resp. Ex. 10A], he was

ordered discharged by letters from CEA addressed to Cannon Manufacturing Corporation. The reason given was that CEA had refused to accept him as a member and consequently CEA demanded "the immediate dismissal of him." On that same date [Resp. Ex. 10D] respondents advised CEA that their action was discriminatory and not agreeable to the company and thereupon Mr. Lewis, CEA's attorney, wrote his letter of December 3, 1941 [Resp. Ex. 11] insisting upon the rights of CEA to determine its membership and by the same token and under its contract of October 4, 1941, the right to determine who could or could not work for the company.

In spite of all of these demands by CEA and its representatives, the company took no precipitous action against Armant. He had run for office on the Board of Directors and apparently the election had been fairly conducted, at least, he made no complaint that it was unfair, and he was defeated for the Board of Directors of CEA.

Feeling between him and certain of the directors and officials of CEA increased in intensity. A hearing was held on the "due to unpleasant circumstances" [letter of July 31, 1942, Bd. Ex. 37, R. 693], which hearing was neither controlled, directed nor influenced by the respondents [R. 305-309].

Under date of June 27, 1942 [Resp. Ex. 6], CEA had advised Robert J. Cannon of the respondents that Armant and several other persons were "corrupting the morale of the other employees with false propaganda," and "therefore the Board of Directors, in quorum, demanded the immediate dismissal of the above parties." The respondents were not satisfied with any such peremptory demand and wrote their letter of July 3, 1942, to the CEA stating that "we have no information in regard to whether

or not these persons are holding up production, or are in any other manner a bad influence," and advising that "if further information were furnished" to the respondents, the respondents "would be glad to consider the matter further."

Certainly this exchange of correspondence does not indicate, nor does anything else in the entire record indicate any illegal discharge of Armant.

Armant testified that CEA officers told him after his first hearing that he, Armant, would be discharged by the respondents [R. 309, 336], but the fact is that Armant was not so discharged; he went back to work for at least two weeks. *Then his card was not in the rack. This action, however, is not the discharge complained of in these proceedings.*

Armant took the matter up with the CIO and Mr. Livingston, United States Commissioner Conciliation Service [Resp. Ex. 14A; R. 310, 312, 317] and an arbitration hearing was held. This arbitration hearing was with the consent and knowledge of the Labor Board itself and during that hearing Navy Lt. Comm. Powell sat in as an observer [R. 320-321]. When Armant and Fellows were returned to work through the intervention of Mr. Livingston, the "strike" or what to Robert J. Cannon and Mr. Hawkinson appeared to be a strike, or a threatened strike, occurred in the cafeteria and it was then that Mr. Armant was asked to leave, *upon the assurance that he would be paid for the time that he was off* [R. 597].

That arbitration hearing resulted in Fellows' being reinstated and Armant's being discharged [R. 602]. Under these circumstances, it is not conceivable that this hearing was arbitrary, capricious or unfair. In the first place Lt. Comm. Powell would not have stood for it, and

most certainly Mr. Livingston would not have consented to any such a proceeding. The evidence is clear that Mr. Livingston was there during the whole of the hearing. The respondents were faced with the absolute necessity of discharging Mr. Armant upon his being rejected as a member of the CEA and upon his dismissal from membership in the CEA. Legally speaking, if the contract of employment under which the plant was being operated was valid and subsisting, the respondents had no right to review the action of CEA in refusing to accept a member or expelling a member for infraction of its rules, by-laws or constitution.

We now come to a discussion on that portion of petitioner's brief headed:

> "(3) The discharges of Caffarel and Maynard" (Pet. Br. 38).

Very cogent written evidence of the flagrant inconsistency in petitioner's Order and Findings and in the brief of the petitioner is found in the footnote on page 40 of petitioner's brief.

It seems to us to be a most remarkable conclusion inasmuch as the only evidence of substance in the case so far as concerns Maynard's discharge, is that furnished by Mrs. Maynard herself, viz., that she had already tendered her resignation from the respondents and was not discharged; yet "despite her own statement" (that she did resign), the Board finds that she "did *not* resign (emphasis supplied) [R. 83]." (Pet. Br. 40.)

In other words, the Board not only disregarded the creditable written statement of Mrs. Maynard that she was not discharged but made a finding and an order in direct opposition to that evidence. How, we ask, may such action on the part of the Board be justified?

As to Herbert Caffarel: He began work for respondents in 1940 and for two years worked as relief man in the punch press department; in the early part of 1941 he solicited employees to join CERA [R. 479-486]; became active in the Contact Committee [R. 494] and became chairman of that organization and continued as such chairman until the Committee was dissolved [R. 494-507]; resumed his activities on behalf of CERA which was then known as CEA [R. 509]; elected in November, 1942, to the Board of Directors of CEA [R. 510] and thereafter became president of this organization. All of the foregoing facts are conceded in the petitioner's brief (pp. 38-39); in fact, they are urged in that brief as being some evidence of unfair labor practices or undue influence by the respondents.

Further continuing the petitioner points out certain differences which arose between the employee Gibson and the employee Maynard and one Franklin who was an employee as the business agent of CEA and with whose policies Caffarel did not agree. Formal notice was served on the respondents by CEA of the expulsion of Florence Maynard and Herbert Caffarel "from membership in the CEA" which notice in effect demanded that they be discharged [Resp. Ex. 26, R. 710]. In response to this demand the respondents asked for details of specific charges on which those people had been tried and convicted [Bd. Ex. 27; R. 711]. Particular attention is called to the testimony [R. 533-535] showing the formality and thoroughness with which the hearing was conducted by CEA bearing upon the expulsion from CEA of Mr. Caffarel and Mrs. Maynard. While the respondents hold no brief for CEA, nevertheless it seems that the action of CEA at that hearing was neither arbitrary nor capricious. If the method of conducting that hearing

was not to the present liking of the people who had been officers and directors and members of CEA (Maynard and Caffarel, *et al.*) that fault lies with the CEA and with its past and present officers, members and directors and not with the respondents.

On many and many occasions as appears from this record and in petitioner's brief, the decisions of the respondents, whatever they might have been were bound to be wrong in the view of one group or the other.

With respect to the next point sought to be made in the petitioner's brief, viz.,

> "(4) The Board's conclusions with respect to the discharges requested by CEA." (Pet Br. 40.)

we can only say that *based upon the premise that the contract between the respondents and CEA was illegal or void,* the conclusion of the Board in respect to these discharges is probably well founded. However, it is our contention that that premise is not well founded and that the contract between the respondents and CEA was good, valid and subsisting and that it necessarily follows that the discharge of these employees (Maynard was never discharged but voluntarily resigned) was justified both in law and in fact.

We now proceed to a discussion of that portion of the petitioner's brief entitled

> "b. The discharge of George for UE activity" (Pet. Br. 40).

We respectfully submit that the statement of Mr. Cromwell that "they were forming" an organization [R. 213-214; Pet. Br. 41] is not within reason chargeable against the company because in the first place there is no evidence that Cromwell meant by that statement to include anyone except the organizers of CEA; surely, he did not mean himself and the respondents. The statement attributed to Cromwell that "Mandella's activity 'was all right and the company knew about what he was doing' [R. 213]" (Pet. Br. 41) is the rankest kind of hearsay and ought not to be given any credence whatsoever as being binding upon these respondents.

A brief review of the Alvin L. George incidents ought to absolve the respondents from any charge of violations of the Act insofar as concerns George. Respondent's Exhibit 9, dated December 4, 1941 [Resp. Ex. 9], shows that CEA demanded the immediate dismissal of George because CEA had refused to accept him as a member of the Association; assuming that George was discharged by Cromwell on or about the time he made the radio speech on August 26, 1941 [Bd. Ex. 30], *that is not the discharge upon which complaint is made.* The strike occurred on September 2, 1941, and wound up in the Board office before Mr. Walsh, a regional director at Los Angeles [R. 228]. Feelings ran high and it was finally determined by agreement to reinstate George and to settle the matter by arbitration. Bd. Exs. 32 and 33 show the result of that hearing; that it was fair to George there can be no doubt. He himself testified that he was called into the hearing room and asked if

he accepted the decision of the arbiters and he stated that he did so accept it and was satisfied with it [see Bd. Exs. 32 and 33, *supra*].

The fact, if it be a fact, that Cromwell told George that he would "get" him within 45 days after Mr. George actually returned to work (Pet. Br. 42) should not be charged against the company because there is no evidence that the respondents knew it and after the discussion between George and Cromwell in which each expressed his opinion of Harry Bridges, the fact that Cromwell became angry and told George, "we would all get our heads cut off someday" [R. 242-243] does in no sense mean that the respondents were engaged in unfair labor practices. Such sttaement may have been Cromwell's own personal feelings concerning the general unrest in the country; certainly there was nothing in such statement to indicate that it was done to intimidate or coerce George through anything that the respondents did or said.

The matter covered in pages 42 and 43 of petitioner's brief regarding some gossip between Gibson, George and Monjar is really so trivial as to make it unworthy of discussion.

Mr. George's testimony should be scurtinized very carefully. Early in his employment he knew that Mandella was doing things in violation of the law in trying to organize the plant on company time; he remonstrated with Mandella because of the fact [R. 212]. George actually sold Mandella a public address system to assist Mandella in his solicitation. [R. 217.]

IV.

The Board Conducted Elections—Each Won by CEA—and Which Resulted in Certifying CEA as Bargaining Representative and in the Making of the Contract Between Respondents and CEA Should Preclude the Enforcement of the Board's Order.

There were two such elections; one held September 9, 1941, and the other held January 25, 1943.

The 1941 election arose under the following circumstances:

On June 9, 1941, CEA filed with the Board a Petition for an Investigation and Certification of Representatives [R. 37; Bd. Ex. 68A]. Thereafter on September 2, 1941, UE called a strike of the respondents' employees and thereupon the local representatives of the Armed Services and of the Office of Production Management arranged a conference with interested parties at the Regional Office of the Board, which conference was attended by representatives of UE, CEA and the respondents. UE agreed to terminate the strike, respondents agreed to reinstate certain discharged employees subject to arbitration and the parties agreed to a consent election on the petition before the Board [R. 39-40].

The Certificate of Results of Consent Election dated September 10, 1941 [Resp Ex. 12B; R. 709] shows that CEA had 370 votes and UE 268 votes. Thereupon the Regional Director of the Board certified the outcome of the election.

About October 24, 1941, after negotiations, the respondents and CEA executed the agreement covering the employees' rights of service, working conditions, etc. [R. 42].

The election of January 25, 1943, arose under the following circumstances:

On September 21, 1942, UE filed with the Board a Petition for Certification as bargaining representative of respondents' employees [R. 47; Bd. Ex. 68A]. A Decision and Direction of Election was issued by the Board on December 31, 1942. [Bd. Ex. 68E.] The election was held on January 25, 1943, and CEA again received a majority of the valid votes cast. On January 30, 1943, UE filed objections alleging in substance, that the respondents had illegally assisted CEA prior to the election [R. 47; Bd. Ex. 68M], and at the same time UE filed formal charges [R. 47], alleging generally that the companies had violated Sections 8(1) and (2) of the Act.

On March 18, 1943, the Regional Director notified UE of his refusal to issue a complaint and filed a Report on Objections [R. 48] which concluded that none of the objections raised substantial or material issues. In a supplemental Decision and Certification of Representatives issued April 12, 1943, the Board overruled the objections and certified CEA [R. 48].

Thereafter on May 5, 1943, the respondents and CEA executed a new agreement [R. 48].

On page 51 of its brief, and with respect to respondents' view that by certifying CEA after the election of January 25, 1943, petitioner stated that respondents' contention that the Board's action in certifying CEA following the election of January 25, 1943, precluded the Board from examining respondents' conduct prior to the 1943 certification in the instant proceeding, said: "A similar contention was squarely rejected by the Supreme Court in *Wallace Corporation v. NLRB,* 323 U. S. 248, 253-

255." Petitioner also cites *NLRB v. Gilfillan Brothers,* 148 F. 2d 990 at 991.

The dissimilarity between the instant case and the *Wallace* and *Gilfillan* cases is at once apparent; those cited cases are not authorities against respondents' contentions.

In *Wallace Corp. v. NLRB, supra,* the report expressly declares that the contract made between the company and Independent Union, which contract was under attack, "was executed after notice to the company by the business manager of Independent that Independent must have the right to refuse membership to old CIO employees who might jeopardize its majority. This business manager (of Independent) . . . wrote the company, prior to the making of the contract, that Independent insisted upon a closed shop agreement because it wanted a 'legal means of disposing of any present employees' who might affect its majority, and 'who are unfavorable to our interests.' The contract further significantly provided that the company would be released from the clause requiring it to retain in its employ union men only, if Independent should lose its majority and the CIO win it."

The report also points out that the Board and the lower court expressly found "that the contract was signed with knowledge on the part of the company that Independent proposed to refuse to admit them (former CIO employees) to membership."

How different is the instant case where the CEA contracts specifically provided that everybody in the employ of the company could join CEA.

In the *Gilfillan* case cited by petitioner the facts are very much different and call for different application of the law than do the facts of the instant case. In the *Gilfillan* case the intra-company union, known as the Association, won an election over the CIO by which the Association was certified by the Board. Thereafter CIO filed a charge with the Board alleging that the respondent had "encouraged and otherwise interfered with the formation" of the Association, upon the promise of the Association that it would not in the future dominate or interfere with the administration of the Association, or any other labor organization having to do with its employees. Then CIO withdrew the charge. The charge was never acted upon and *no election was thereafter held.* The court points out that because of those facts and because the "dominating acts *before* the certification followed by such domination *thereafter*" gave the Board the right to consider the circumstances under which the Association was formed and operated and acted as the bargaining agent.

In the instant case not only were two elections held but the charges filed by the UE were ruled upon adversely to the UE and an election was thereafter held; objections were then filed by the UE to the certification of the CEA as a bargaining representative but the objections were denied by the Board.

V.

The Enforcement Order Sought Here Should Not Be Made Because of Delay in Bringing These Proceedings.

This court has wide discretionary powers in the relief administered as a result of this petition. This court may enforce, modify or enforce as so modified, or set aside in whole or in part the order of the Board.

The fact that the Trial Examiner passed away before he had a chance to prepare the proposed Findings of Fact and those proposed Findings of Fact had to be prepared by someone who had not seen the witnesses on the stand, their demeanor, etc., is one reason that these Findings of Fact and the order based thereon should not be held of the same sanctity as the Findings of a trier of fact who has had a chance to observe the witnesses on the stand, their demeanor, etc. That one year, six months and nine days should elapse after the close of the hearing before the order sought to be here enforced was made and another two years and fifteen days elapsed before the petitioner filed these proceedings in this court, should be considered by this court in relieving the respondents from the disastrous effect of the order. We recognize that the Act as it existed when these proceedings were first before the Board contains no limitation period, but nevertheless neither law nor equity favor the prosecution of stale claims.

"This is another of those dreary reviews of Board proceedings" where respondents attack the "Findings of Fact *made* by the Board, as trier of facts, on evidence *presented* by the Board as prosecutor in support of charges *filed* by the Board as complainant." (*NLRB v. Caroline Mills, Inc.*, C. C. A. 5-1948.) (Emphasis supplied.)

Conclusion.

It is respectfully submitted that as set out on page 58 of the petitioner's brief this Honorable Court in determining this matter may enforce, modify or enforce as so modified or set aside in whole or in part the order of the Board.

The respondents have made proper objection and urged before "the Board its member, agent or agency" the points upon which the above mentioned errors are based. [For a few of many examples see, R. 168, 204, 206, 207, 209, 211.] In *Marshall Field & Co., v. NLRB*, 318 U. S. 253 (Pet. Br. 55), the court pointed out they would not consider the objections made by the employer saying "we do not find that *at any stage of the proceedings*, the objection now urged . . . was presented to it or to any member or agent of the Board . . ." In *NLRB v. Cheney California Lumber Co.*, 327 U. S. 385, also cited by petitioner, same general rule is announced.

For all of the reasons above set out the order of the Board should be set aside or so modified as to this court seems proper.

Dated: July 30, 1949.

Respectfully submitted,

David H. Cannon,
Attorney for Respondents.

Reed E. Callister,
Of Counsel for Respondents.